

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

J & J SPORTS PRODUCTIONS, INC.,
Plaintiff(s),
v.
MANUEL AVILA, et al.,
Defendant(s).

2:13-CV-763 JCM (CWH)

ORDER

Presently before the court is plaintiff-counterdefendant J&J Sports Productions, Inc. motion to dismiss counterclaims. (Doc. # 7). Pro se defendants have not filed a response in opposition and the deadline date for filing a response has expired.

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Where a complaint pleads facts that are ‘merely consistent’ with a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (citing *Bell Atlantic*, 550 U.S. at 557). However, where there are well pled factual allegations, the court should assume their veracity and determine if they give rise to relief. *Id.* at 1950.

Pursuant to Local Rule 7-2(d), an opposing party's failure to file a timely response to any motion constitutes the party's consent to the granting of the motion and is proper grounds for dismissal. *U.S. v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). However, prior to dismissal, the

1 district court is required to weigh several factors: "(1) the public's interest in expeditious resolution
2 of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4)
3 the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
4 sanctions." *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *Henderson v. Duncan*, 779 F.2d
5 1421, 1423 (9th Cir. 1986)).

6 In light of the defendants' failure to respond and weighing the factors identified in *Ghazali*,
7 the court finds dismissal appropriate.

8 Accordingly,

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff-
10 counterdefendant's motion to dismiss (doc. # 7) be, and the same hereby, is GRANTED.

11 DATED August 6, 2013.

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13 **UNITED STATES DISTRICT JUDGE**
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